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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Review of the Commission's Regulations)
Governing Television Broadcasting)

MM Docket No. 91-221

Television Satellite Stations)
Review of Policy and Rules)

MM Docket No. 87-7

COMMENTS OF AMERICAN WOMEN IN RADIO & TELEVISION, INC.

American Women in Radio & Television, Inc. ("AWRT") hereby submits its comments on the Second Notice of Proposed Rulemaking in the above-referenced proceeding (the "Second Notice"). The Second Notice proposes a series of changes to the Commission's rules on ownership of local television stations, the radio-television cross-ownership rule, and attribution of local marketing agreements. These proposed changes, along with the ownership changes mandated by the Telecommunications Act of 1996, are destined to alter the course of the television industry. Following enactment of the 1996 Act there was a tremendous surge in consolidation in the communications industry. This trend is likely to continue and accelerate if the proposals in the Second Notice are adopted.

In this period of tremendous change, it is important that the Commission retain and renew its commitment to diversity in broadcast ownership and diversity in viewpoint. While AWRT does not take a position on the specific proposals in the Second Notice, AWRT urges the Commission to proceed cautiously and to fully evaluate the potential effect of the proposed policy changes on opportunities for women-owned businesses to acquire television stations.

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Specifically, AWRT urges the Commission to: (1) initiate and conclude a long overdue study on female ownership of communications companies; and (2) in granting waivers of the ownership rules review as one favorable factor a station owner's incubation of women or minority-owned stations.

I. A Study on Female Ownership is Essential to Evaluating the Merits of the Proposals in the Notice

A. Current Female Ownership Data is Not Available

It is difficult to assess or quantify the effect of the Commission's proposals in the Second Notice on ownership opportunities for women without the Commission's active involvement in identifying stations owned by women. As recognized in the Initial Regulatory Flexibility Analysis Regulatory Flexibility Act ("IRFA"), attached to the Second Notice as Appendix A, the Commission does not collect data on the gender or race of broadcast owners. The most recently available detailed data on women-owned broadcast stations indicates that in 1987 women controlled 1.9%, 27 of the 1,324 commercial and non-commercial television stations.¹

As of August 31, 1996, there were 1,186 commercial television stations in the U.S.² There is no data or information available, however, to determine whether in 1996 women-owned businesses continued to own 1.9% of the commercial and non-commercial television stations as in 1987 or whether that percentage has changed. Collection of recent data on women-owned stations is particularly important given the tremendous growth of women-owned businesses in the

¹ Second Notice at Appendix A (citing AWRT Comments filed in MM Docket No. 91-149 and MM Docket No. 91-140).

² Second Notice at n.20.

U.S. Recent data reveal a monumentous growth in the number of women-owned businesses in the U.S. According to the 1992 Census, women-owned businesses owned 34% of all U.S. firms.³ There is no data to evaluate whether this growth has been mirrored in the ownership of television stations by women. The 1992 Census reported that 2.3% of the firms owned by women are communications firms.⁴ This percentage is an aggregate percentage for all communications industries, including all point-to-point communications services, not just television stations. Current data is important to evaluating the merits and effect of the proposals in the Second Notice on the diversity of ownership and diversity of viewpoint.

B. The Commission, as the Licensing Agency, Must Collect the Ownership Data

The tremendous void of ownership data on station owners can only be filled by the Commission. As the licensing agency, the Commission has direct access and jurisdiction to collect ownership data. Other federal agencies that could collect this data on women-owned stations have reduced or eliminated their collection efforts. The Census Bureau -- the source of the 1987 ownership data cited in the IRFA -- no longer reports detailed data on female ownership of television stations. The National Telecommunications Information Administration collects data on minority ownership of broadcast stations but does not collect similar ownership data on women. The Commission has begun to collect ownership information on gender and race of high bidders in spectrum auctions for information purposes. Currently, however, the Commission does

³ 1992 Survey of Women-Owned Businesses, Excerpts, United States Department of Commerce, Economic and Statistics Administration, Bureau of the Census ("1992 Census") at 10.

⁴ *Id.*

not collect this data from mass media licensees as recognized in the IRFA.

In 1995, the Commission sought comment on whether to amend the Annual Ownership Report Form 323 to collect ownership data. The proposal received support from several parties. In addition, AWRT reiterated this request for data collection in its comments filed in the Commission's market entry barrier proceeding last year.⁵ Two years after its initial proposal, the Commission has not acted to amend the ownership report form to collect this data. In addition, despite repeated requests from AWRT since 1991 and repeated indications from the Commission that such data is important and ought to be collected, the Commission has not initiated a study on female ownership. Without data collected, generated and analyzed by the Commission, ownership data on women-owned spectrum licensees will remain unavailable.

C. Data Collection is Important to the Commission's Development of Policies

The Commission appears paralyzed to develop policies that appropriately address the creation of ownership opportunities for women by its perceived need for additional data. This data and evidence is, and will continue to be, important to sustain appropriate gender-based policies adopted by the Commission. Court decisions in the area of gender-based preferences require that the Commission develop a record sufficient to withstand intermediate scrutiny.⁶ *See United States v. Virginia*, 64 U.S.L.W. 4643 (1996) (applying intermediate scrutiny to gender-

⁵ See Comments of AWRT and Women of Wireless™, *In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, GN Docket No. 96-113 (hereinafter "AWRT Comments").

⁶ The standard of review for gender-based policies is intermediate scrutiny. The Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 115 S. Ct. 2097 (1995), is limited to race-based policies and does not apply to gender-based policies.

based program and indicating reservation of most stringent judicial scrutiny for classifications based on race and natural origin); *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (1982).⁷ These decisions do not require inaction by the Commission but rather action by the Commission to collect the data necessary to make a reasoned decision. In *Lamprecht v. FCC*,⁸ the Court of Appeals for the District of Columbia Circuit did not invalidate all gender-based policies. Rather, the court found that the Commission had not developed a sufficient record to support its gender-based policies under intermediate scrutiny. The *Lamprecht* decision does not mean such a record cannot be developed to sustain such policies. Similarly, in *Adarand Constructors, Inc. v. Peña*,⁹ the Supreme Court did not overrule *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547 (1990), it merely changed the standard of review from intermediate to strict scrutiny for race-based policies. Gender and race-based policies can be sustained based on a record developed by the Commission establishing the nexus between ownership and viewpoint diversity and as a compensatory government program.

Evidence demonstrating the differing choices that women make on issues and in viewpoint was provided to the Commission in comments filed in MM Dockets No. 94-149, 94-140 on May 17, 1995 by the Citizens Communications Center Project. Statistics from AWRT's annual Gracie Allen awards also demonstrate the differing programming viewpoints of women in management roles. Every year AWRT issues a series of awards that recognize individuals in radio, television,

⁷ See *AWRT Comments* in GN Docket No. 96-113 for a legal analysis of the level of scrutiny applied by courts to gender-based policies.

⁸ 958 F.2d 382, 395 (D.C. Cir. 1992).

⁹ 115 S. Ct. 2097 (1995).

and cable entertainment programs, commercials, news features and other programs who encourage the positive and realistic portrayal of women in radio and television. In 1996, 80% of the award winners had a woman executive producer or producer. One decade ago, in 1986, an analysis of local radio and television stations entries found that for radio entries, women represented 84.2% of the writers, 58.5% of the producers and 92.9% of the reporter/hosts.

D. Ownership Opportunities of Women Will Diminish Without an Ownership Study

The complete void of female ownership data will continue to hamper the Commission's policy making in several key proceedings. The effect has already been felt in spectrum auctions for services, such as personal communication services ("PCS"). Bidding rules in the PCS auctions were revised to eliminate gender-based bidding incentives based on the Commission's perceived need for additional evidence on the need for race and gender-based policies. The Commission's action to eliminate the race and gender-based bidding incentives for the PCS C block auction was driven by the immediacy of the auction. Other auctions that did not carry this degree of urgency continue to be conducted with rules that provide incentives, if at all, based solely on size. As AWRT's comments in the market entry barrier proceeding demonstrate this practice dramatically reduces the dissemination of licenses to women-owned firms. An analysis of auction results reveals that gender-based bidding incentives resulted in women-owned firms acquiring over 30% of licenses -- a percentage comparable to the percentage of women-owned firms in all industries.¹⁰ By contrast, in auctions with gender neutral rules for small businesses, 49% to 82% fewer

¹⁰ See, *AWRT Comments*, GN Docket No. 96-113, at 4.

women-owned firms were able to win licenses.¹¹

The lack of current female ownership data also effects the Commission's evaluation of the impact of proposed policies in this proceeding. While seeking data from outside sources on female ownership of stations, the Commission must recognize there is no source for this data other than the FCC. The merits of the proposals in the Second Notice can not be evaluated without fundamental data on female ownership.

Efforts to eliminate market entry barriers as required by Section 257 of the Communications Act also will benefit from the collection and analysis of current female ownership data. This data is relevant further to completion of the Commission's report to Congress, due later this year, that must include an evaluation of the participation of women in spectrum auctions.¹² This report would benefit from a comparative analysis of how women have fared in other licensing processes. AWRT urges the Commission to undertake and complete a study on female ownership of communications licenses issued by the Commission this year.

II. The Commission Should Seek to Promote Diversity In Ownership by Promoting Collaborative Relationships between Station Owners and Women Owners

The Second Notice contains several recommendations for granting waivers of the Commission's local ownership rules, the radio-television cross-ownership rule and for allocation of vacant channels. AWRT believes that the use of waivers may be appropriate in certain circumstances where the owner seeking the waiver has incubated or mentored a women-owned or minority-owned station. This incubation will offset the loss of diversity resulting from issuance of

¹¹ *Id.*

¹² 47 U.S.C. § 309(j)(12).

the waiver.

AWRT encourages the Commission to adopt an incubator program similar to the program proposed by the Commission in its Notice of Proposed Rulemaking in MM Dockets 94-149 and 91-140. Adoption of such a program by a station owner would then be considered favorably in evaluating a waiver request.¹³ An incubator program for women and minority operators will ensure a continued diversity in broadcast ownership and media voices by bridging the gap that currently separates women entrepreneurs from the financing and industry expertise required to acquire mass media facilities. For the incubator program to increase female and minority ownership of broadcast stations, the program must be sufficiently flexible to permit both the incubator and the incubated station to benefit. Considering an incubatory program as one favorable factor in evaluating an owner's waiver request to exceed the ownership limits provides a direct and significant incentive for owners to incubate women-owned stations. The requirements for incubation must be general enough to permit the parties to negotiate a successful arrangement and so as not to dilute the incentive for the creation of incubator programs. Every restriction will be weighed by station owners in deciding whether to establish an incubator program.

AWRT urges the Commission to include as one favorable review factor in granting a waiver of the local ownership rule and the radio-television cross-ownership rule a station owner's adoption of an incubator program if the incubator program meets the following broad guidelines:

- (1) The incubator program applies to women and minorities.

¹³ *In the Matter of Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Notice of Proposed Rulemaking, MM Docket No. 94-149, MM Docket No. 91-140, 10 FCC Rcd. 2788 (1995).

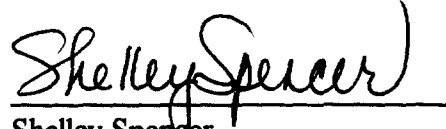
- (2) Owners seek to exceed the local ownership limits or cross-ownership limit in one market for every two women or minority owned stations or systems incubated.
- (3) The incubated facility to be purchased and operated is subject to a one-year holding requirement on the part of the incubated owner. This holding period is preferable to a minimum period for existence of the incubator program. Imposition of a minimum period, such as the one-year period, could chill use of the program by owners given the speed with which broadcast stations are acquired and the associated cost of delay.
- (4) The incubator program established by the owner should include three elements: (i) financial; (ii) operational; and (iii) training assistance. The greatest weight should be placed on financial assistance as a means of assisting women to overcome the barriers they face in raising capital. The amount of financial assistance could be calculated as a percentage of the purchase price of the additional station by the incubator and divided among the four incubated stations. Alternatively, the incubator could be required to provide or assist the female or minority station owners in acquiring a minimum of 50% of the capital required to purchase the incubated stations.

III. Conclusion

Before proceeding with the adoption of the policies proposed in this Second Notice, AWRP urges the Commission to undertake and complete the long overdue study on female ownership of communications licensees. A study is imperative to the development of sound ownership policies in the dynamic television market. AWRP also encourages the Commission to incorporate as one favorable factor in reviewing waivers of the local ownership and cross-ownership limits addressed in this proceeding a station owner's commitment to incubate women

and minority-owned stations. A collaborative process will ensure that a diversity of voices remains as ownership of television stations consolidates.

Respectfully submitted,

A handwritten signature in cursive script that reads "Shelley Spender". The signature is written in black ink and is positioned above a horizontal line.

Shelley Spender

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